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9 UNITED STATES OF AMERICA

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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION
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15 UNITED STATES OF AMERICA,
16 Plaintiff,
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18 v.
19 PATRICK EDWARD McCORD II,
20 Defendant.
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Case No. 8:23-CR-015-CJC

GOVERNMENT'S POSITION STATEMENT
REGARDING SENTENCING OF DEFENDANT
PATRICK EDWARD McCORD

[Fed. R. Crim. P. 32(f)(1)]

DATE: May 9, 2024
TIME: 11:00 a.m.
PLACE: Courtroom 9-B
EST: 20 minutes

INTRODUCTION

On November 27, 2023, defendant PATRICK McCORD pleaded guilty to Count ONE of the two-count Indictment, namely, Possession with Intent to Distribute at least 50 Grams of Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii). In summary, defendant admitted that he knowingly possessed 97.2 grams of methamphetamine (actual) and smaller amounts of various other controlled substances (e.g., fentanyl, MDMA, Xanax, Alprazolam, etc.), as well as multiple indicia of drug-trafficking activities (e.g., a pay-owe sheet, a functional digital scale, 19 small empty plastic baggies, and three cellphones, one of which contained recent texts evidencing defendant's sale of drugs). Along with his other possessions, defendant was also found to be in possession of a 9mm pistol.

Defendant pleaded guilty pursuant to a plea agreement. In that agreement, the government promised to "recommend that defendant be sentenced to a term of imprisonment no higher than the low end of the applicable Sentencing Guidelines range, provided that the Total Offense Level used by the Court to determine that range is 29 or higher and provided that the Court does not depart downward in Offense Level or Criminal History Category." (See Plea Agmt. at 3, ¶ 3(d).)

USPO'S SENTENCING CALCULATIONS & RECOMMENDATION

In the Pre-Sentence Report, the USPO concludes that defendant's Total Offense Level is 29. (PSR ¶ 46.) The USPO also concludes that defendant has 39 criminal history points, which places him in Criminal History Category VI. (PSR ¶ 90.) Thus, the PSR states that the Guidelines' advisory sentencing range is 151-188 months' imprisonment. (PSR ¶ 152.)

GOVERNMENT'S RESPONSE TO PRE-SENTENCE REPORT

A. Factual Statements

The government has no objection to the PSR's summary of defendant's offense conduct.

B. Offense Level Computation

The government agrees with the PSR's calculation of defendant's Total Offense Level under the Guidelines: 29.

C. Criminal History Category

The government agrees with the USPO's calculation of defendant's Criminal History Category: VI.

D. Departure Issues

The government is not aware of any basis for an upward or downward departure under the Sentencing Guidelines.

E. Supervised Release

As to the term, the government agrees with the USPO's recommendation of a five-year term of supervised release.

As to the conditions, the government agrees with all of the USPO's recommended conditions of supervised release, except the search-condition designated as Condition #8. As to the search-condition, the government asks the Court to use the language that the parties agreed to in the plea agreement:

Defendant shall submit his person and property — including any residence, vehicle, container, papers, effects, and cellular telephones, computers, and other electronic communication or digital storage devices and media under his control — to search and seizure at any time of the day or night by any law enforcement officer or probation officer, with or without a warrant, probable cause, or reasonable suspicion. If the defendant resides with others during the term of supervised release, the defendant shall

1 warn any other occupants that the premises
2 are subject to search pursuant to this
condition.

3 (See Plea Agmt. ¶ 2(h), at 2-3.)

4 The first sentence of the parties' proposed search-condition
5 borrows language from the Orange County Superior Court, and that is
6 good because local police officers will have a shared understanding
7 of what it means if they ask whether the defendant is on federal
8 probation with a "search condition." Moreover, multiple judges in
9 this district use the alternative language that the parties have
10 stipulated to in this case. The language has also withstood
11 challenges on appeal. In one appeal handled by the undersigned
12 counsel, the Ninth Circuit rejected various Fourth Amendment
13 challenges to similar language, most notably the condition's
14 authorization of suspicionless searches. See United States v. Park,
15 2021 WL 5984980, at *1 (9th Cir. 2021). As Park explains, "[the
16 Circuit has] permitted suspicionless searches of federal supervisees
17 in the past, see United States v. Betts, 511 F.3d 872, 876 (9th Cir.
18 2007), as well as searches of federal supervisees' electronic data,
19 see United States v. Bare, 806 F.3d 1011, 1018 n.4 (9th Cir. 2015)."
20 See Park, 2021 WL 5984980, at *1 (vacating condition only to the
21 extent it authorized search of digital devices and only due to
22 district court's failure "to make a factual finding that established
23 a nexus between computer use and a supervised release sentencing
24 goal," e.g., protection of the public, specific deterrence, etc.).

25 **F. Fine**

26 All fines should be deemed waived as defendant appears unable to
27 pay a fine.

1 **G. Restitution**

2 Restitution is not an issue in this case.

3 **SENTENCING RECOMMENDATION**

4 In accordance with the plea agreement and 18 U.S.C. § 3553(a),
5 the government hereby recommends the following sentence:

- 6 (1) a term of 151 months' imprisonment, at the
7 low-end of the Guidelines range applicable
8 to Offense Level 29 and Criminal History
9 Category VI ;
10 (2) a 5-year term of supervised release, with
11 the "search condition" requested herein; and
12 (3) a \$100 special assessment.

13 The government believes that this sentence is sufficient, but
14 not greater than necessary, to achieve the statutory objectives of
15 sentencing set forth in § 3553(a), namely, to reflect the seriousness
16 of the offense conduct, to promote respect for the law, to provide
17 just punishment, to deter defendant from committing future crimes,
18 and to deter other persons from committing similar crimes. This
19 sentence also reflects defendant's prompt acceptance of
20 responsibility.

21 However, as the Ninth Circuit teaches and the government's
22 undersigned counsel often notes, "reasonableness is a range, not a
23 point," and the Guidelines no longer define that range. United
24 States v. Mohamad, 459 F.3d 979, 989 (9th Cir. 2006). The Court is
25 free, therefore, to make its own assessment about whether a downward
26 variance may be warranted and still be within the "range" of
27 reasonableness as defined in Booker and as informed by § 3553(a)'s
28 sentencing factors.

1 The USPO recommends a sentence of 132 months' imprisonment (see
2 USPO Letter at 1), which is slightly below the Guidelines sentencing
3 range. In that regard, the PSR and the USPO's recommendation letter
4 both note some mitigating factors that warrant consideration:

5 (1) defendant is the product of a broken home and unstable family
6 environment; (2) defendant's father was himself imprisoned for drug-
7 trafficking and was thus absent throughout most of defendant's
8 childhood; (3) defendant's mother divorced his father, when defendant
9 was approximately five years' old; (4) defendant was thereafter
10 raised in an unstable environment by his mother and a series of two
11 step-fathers, who his mother divorced in fairly short order;
12 (5) defendant started abusing drugs at a very young age, including
13 alcohol at age 12, marijuana at 13, cocaine, LSD, mushrooms, and
14 benzodiazepines at 14 or 15, methamphetamine at 20, and fentanyl at
15 28; and (6) he has two prior hospitalizations at the age of 15 when
16 he was diagnosed with a "major depressive affective disorder," of a
17 severe degree but without psychotic features. (See PSR ¶¶ 96-97,
18 121-130.)

19 DATED: May 1, 2024.

E. MARTIN ESTRADA
United States Attorney

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21 MACK E. JENKINS
Assistant United States Attorney
Chief, Criminal Division

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23 /s/ R.J.K.
24 ROBERT J. KEENAN
Assistant United States Attorney

25 Attorneys for Plaintiff
26 UNITED STATES OF AMERICA
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CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Orange County, California. I am over 18 years of age, and I am not a party to the above-entitled action. My business address is the United States Attorney's Office, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Suite 8000, Santa Ana, California 92701.

On this date, **May 1, 2024**, I served a copy of the attached document, **GOVERNMENT'S POSITION STATEMENT REGARDING SENTENCING OF DEFENDANT PATRICK EDWARD McCORD**, on defendant's counsel and the assigned U.S. Probation Officer by e-mailing it to the following e-mail addresses:

abp@perezandperez.com

Jill_DaCosta@cacp.uscourts.gov

I declare under penalty of perjury that the foregoing is true and correct. This declaration is executed on this day, **May 1, 2024**, at Santa Ana, California.

/s/ R.J.K.

Robert J. Keenan